

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

United Properties Inv. Co. LC,
Petitioner-Appellant,

v.

Warren County Board of Review,
Respondent-Appellee.

ORDER

Docket No. 11-91-0358
Parcel No. 63-400-06-0663

Docket No. 11-91-0359
Parcel No. 63-400-06-0664

Docket No. 11-91-0360
Parcel No. 63-400-06-0669

Docket No. 11-91-0361
Parcel No. 63-400-06-0670

On March 7, 2013, the above captioned appeals came on for hearing before the Iowa Property Assessment Appeal Board. The hearing was conducted under Iowa Code section 441.37A(2)(a-b) and Iowa Administrative Code rules 701-71.21(1) et al. The Appellant United Properties Investment Company, LLC was represented by Scott McMurray. County Attorney Jon Criswell is counsel for the Board of Review. County Assessor Brian Arnold represented it at hearing. The Appeal Board having reviewed the entire record, heard the testimony, and being fully advised, finds:

Findings of Fact

United Properties, the owner of four vacant and commercially classified sites located on Masteller Road, Norwalk, Iowa appeals from the Warren County Board of Review regarding its 2011 property assessments. The 2011 assessed valuations for the four sites are as follows:

Docket	Assessed Value	Site Size (Acres)
11-91-0358	\$45,700	0.30
11-91-0359	\$61,000	0.40
11-91-0360	\$39,600	0.26
11-91-0361	\$186,000	1.22

The property classifications changed from residential to commercial for the 2011 assessment.

United Properties protested to the Board of Review claiming the subject properties were assessed for more than the value authorized by law under Iowa Code section 441.37(1)(a)(2) and asserting the correct total value of each site is as follows:

Docket	Assessed Value	Site Size (Acres)
11-91-0358	\$12,000	0.30
11-91-0359	\$16,000	0.40
11-91-0360	\$8,300	0.26
11-91-0361	\$32,400	1.22

A recording of the Board of Review hearing was included in the certification. On that recording it is clear that United Properties asserted the subject properties' classifications were incorrect under Iowa Code section 441.37(1)(a)(3). United Properties' representative Scott McMurray explained that he wants the land to be assessed "the same as it was last year," which was a different classification (residential). The Board of Review denied the protest.

United Properties then appealed to this Board, reasserting the property is over-assessed, and again requests that the assessments return to the "previous assessments" which were residential classifications. At hearing before this Board, McMurray acknowledged that he believed the sites were over-assessed and that "there has never been a commercial use of the property." Repeatedly, at the Board of Review hearing and this hearing, he asserts the values should "be what they were last year," which was a residential classification. Ultimately, we find that although not perfectly articulated, United Properties overarching claim is that its properties are misclassified under section 441.37(1)(a)(3) and should be returned to their residential classification, which would likely result in a lower assessed value.

He testified that the City of Norwalk approached United Properties to purchase the subject sites "and clean them up" because it owned a larger parcel to the east. The property record cards indicate that United Properties purchased the subject properties in February 2008. McMurray explained that

United Properties is a residential and commercial property developer in Norwalk and purchased the subject sites for assemblage. At one time, there were three residential improvements on the four subject sites. McMurray testified that the improvements were dilapidated and ultimately torn down; in effect “cleaning up” the eyesores along the main arterial. He further testified that at the time of the Board of Review hearing there was one house remaining on the adjacent property, 193 Masteller Road, which was classified residential.

The subject sites all abut; and all have access from Masteller Road, which is a privately owned road. They also abut Highway 28, which is a major north-south artery in Norwalk. United Properties asserts it would never gain ingress/egress from Highway 28 due to the sites proximity to an intersection and the Department of Transportation restrictions for entrances within a certain distance of an intersection. McMurray conceded that the existing “curb cut” (entrance) off of Highway 28 that is shown at the north edge of the subject properties in Exhibit B, would continue to exist; but primarily because United Properties also owned the property that is located immediately east of the subject sites. Further, he explained that Masteller Road would have to be relocated for future development because of its entrance off Beardsley Road (which is south of the subject sites and intersects Highway 28) is too close to the intersection.

County Assessor Brian Arnold testified for the Board of Review. Arnold explained that a citywide revaluation was done in 2011, and that at that time the subject sites were vacant. Essentially, *absent* any improvements, which would indicate a current use of the property, Arnold turned to the zoning map from the City of Norwalk. The zoning overlay for the subject sites is for commercial use; and he testified the sites were zoned commercial even prior to the change in classification. Arnold submitted a picture of the subject property which shows a sign advertising the site for office and retail use. He provided evidence of similarly sized lots in Indianola that were developed for commercial use.

Only when the assessor's office completed a citywide revaluation in 2011 and the residential improvements did not exist, was the classification changed.

While we understand the difficulty for the assessor's office to determine the use of a property where there are no improvements and no activity or demonstrated use; we disagree that "absent a use" the classification should then be based solely on zoning. Although "zoning can be important in determining land classification," the exclusive use of zoning to classify unimproved property may involve considerations of the property's highest and best use. 2008 IOWA REAL PROPERTY APPRAISAL MANUAL 2-2. Iowa Administrative Code 701-71.1(1) explicitly states that property is to be classified according to its present use and not its highest and best use. We believe by using the zoning to determine classification of a vacant site, it may result in an incorrect assessment. For instance, in this case, it is feasible the subject sites could be improved with a residential use, even with a commercial zoning classification, as commercial zoning would typically also permit any lesser use. While the subject sites are currently unimproved, making an assumption that they will be improved at the highest level allowed by zoning could result in a misclassification of the sites and ultimately an over-assessment of the properties.

We find that until the properties' use changes or the properties are otherwise improved, the classification should remain at the last known use; in this case, residential.

Conclusion of Law

The Appeal Board applied the following law.

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A (2011). This Board is an agency and the provisions of the Administrative Procedure Act apply to it. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review related to the liability of the property to assessment or the assessed amount. § 441.37A(3)(a). The Appeal Board considers only

those grounds presented to or considered by the Board of Review. § 441.37A(1)(b). But new or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption that the assessed value is correct. § 441.37A(3)(a).

Although on its Board of Review petition United Properties listed a claim of over assessment, the recording of the Board of Review hearing establishes that McMurray also articulated a claim of misclassification under section 441.37(1)(a)(3). On appeal to this Board, McMurray argued the properties' assessments should remain at the same value as when the sites were previously classified residential. In essence United Properties contends that its property is over assessed because it is misclassified. We find that United Properties' overarching claim before the Board of Review and this Board is that the subject properties are misclassified under section 441.37(1)(a)(3).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). "Market value" essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. *Id.* If sales are not available, "other factors" may be considered in arriving at market value. § 441.21(2). The assessed value of the property shall be one hundred percent of its actual value. § 441.21(1)(a).

The Iowa Department of Revenue has promulgated rules for the classification and valuation of real estate. *See* IOWA ADMIN. CODE 701-71.1. Classifications are based on the best judgment of the assessor following the guidelines set out in the rule. r. 701-71.1(1). Boards of Review, as well as assessors, are required to adhere to the rules when they classify property and exercise assessment functions. r. 701-71.1(2). Property is to be classified "according to its present use and not according

to any highest and best use.” r. 701-71.1(1). There can be only one classification per property. r. 701-71.1(1).

The subject sites, when purchased by United Properties, had been improved with residential dwellings and all had been properly classified residential. United Properties ultimately removed all of the improvements in an effort to beautify the landscape and to demonstrate partnership and stewardship to the City of Norwalk. Ultimately it intends to assemble nearby sites for future development, but there are no immediate plans of development and the sites remain unimproved. The sites were reclassified commercial in 2011 based upon how the subject properties are zoned; however, we do not find this appropriate given there is no present commercial improvement or use of the site.

The Board recognizes that zoning can be a consideration in the classification of property. 2008 IOWA REAL PROPERTY APPRAISAL MANUAL 2-2. However, we find the exclusive use of zoning to classify the unimproved subject property incorporates a consideration of its highest and best use, which is not permitted by Iowa law. IOWA ADMIN. CODE 701-71.1(1) (2013). In the absence of any clear present use, it seems more reasonable that an unimproved property’s classification continues to carry forward until such time as its use changes or it is improved in a manner that would result in a different classification.

For these reasons, we find United Properties sites to be properly classified residential.

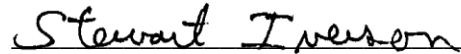
THE APPEAL BOARD ORDERS the January 1, 2011, assessments of United Properties four parcels located on Masteller Road, Norwalk, Iowa, is classified residential realty. We note there was a revaluation in 2011. In order to properly value the property as residential realty, consistent with the 2011 revaluation, we order the Board of Review to determine the residential land value using the appropriate method prescribed by law and report those values to this Board within 20 days of the date of this Order. Once those values are provided we will enter an order accordingly and the Warren

County Auditor shall correct all tax records, assessment books, and other recordings pertaining to the assessment referenced herein.

Dated this 22nd day of April, 2013.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair



Jacqueline Rypma, Board Member

Copies to:

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Certificate of Service

The undersigned certifies that the foregoing instrument was served upon all parties to the above cause & to each of the attorney(s) of record herein at their respective addresses disclosed on the pleadings on April 22, 2013.

By: ☒ U.S. Mail ☐ FAX
 ☐ Hand Delivered ☐ Overnight Courier
 ☐ Certified Mail ☐ Other

Signature _____

